

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS (CORPUS CHRISTI)

| | | |
|-----------------------------|---|--------------------------|
| STATE OF TEXAS, et al., | . | |
| | . | Case No. 6:23-cv-00007 |
| Plaintiffs, | . | |
| | . | |
| v. | . | |
| | . | |
| U.S. DEPARTMENT OF HOMELAND | . | 1133 N. Shoreline Blvd. |
| SECURITY, et al., | . | Corpus Christi, TX 78401 |
| | . | |
| Defendants. | . | Friday, May 12, 2023 |
| | . | 4:02 p.m. |
| | . | |

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE DREW B. TIPTON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

| | |
|---------------------|---|
| For the Plaintiffs: | Office of the Attorney General By: LEIF A. OLSON, ESQ. M. DAVID BRYANT JR., ESQ. P.O. Box 12548 (MC-009) Capitol Station Austin, TX 78711-2548 (512) 463-4139 |
| For the Defendants: | United States Department of Justice By: EREZ REUVENI, ESQ. 450 5th Street NW, Room 6047 Washington, DC 20009 (202) 307-4293 |

APPEARANCES CONTINUED.

| | |
|------------------------|--|
| Audio Operator: | Sasha Ozuna, ECR |
| Transcription Company: | Access Transcripts, LLC 10110 Youngwood Lane Fishers, IN 46048 (855) 873-2223 www.accesstranscripts.com |

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

APPEARANCES (Continued):

For the Intervenor:

UCLA School of Law
Center of Immigration Law and Policy
By: MONIKA Y. LANGARICA, ESQ.
385 Charles E. Young Drive
Los Angeles, CA 90095
(619) 518-5357

Justice Action Center
By: ESTHER SUNG, ESQ.
LAUREN WILFONG, ESQ.
P.O. Box 27280
Los Angeles, CA 90027
(323) 536-3850



1 (Proceedings commence at 4:02 p.m.)

2 THE CLERK: Court calls Civil Action 6:23-cv-7, State
3 of Texas, et al. v. U.S. Department of Homeland Security, et
4 al. May I have appearances by counsel?

5 THE COURT: Mr. Olson, you are muted. And you remain
6 muted.

7 MR. OLSON: Sorry, Your Honor. I didn't know which
8 screen to click on --

9 THE COURT: That's all right.

10 MR. OLSON: -- to make the space bar work. Leif
11 Olson, on behalf of the plaintiff states.

12 MR. BRYANT: David Bryant, also on behalf of the
13 plaintiff states.

14 MR. REUVENI: Good afternoon, Your Honor. You've got
15 Erez Reuveni, on behalf of the defendants. I also have my
16 colleague, Joseph Garrett, who has not yet entered an
17 appearance in this case, but to his misfortune, or fortune,
18 depending on how you look at it, may be doing so imminently.

19 MS. LANGARICA: Good afternoon, Your Honor. Monika
20 Langarica for intervenors in the case. And I am joined by
21 counsel of colleagues.

22 THE COURT: Okay. We are here today to acknowledge,
23 I guess, that there is an addendum to the Federal Rules of
24 Civil Procedure that requires that all TRO requests be filed on
25 Friday afternoon, as close to a holiday as possible. We --



1 everybody has complied with that request. So I do have the
2 motion to supplement the complaint, and I do have a motion for
3 the temporary restraining order. I also have seen the filings
4 by the Department of Justice talking about the case in Florida.
5 We have since read the briefing and filings that are in
6 Florida, as well.

7 So with that in mind, Mr. Olson, it's your motion, go
8 ahead.

9 MR. OLSON: Your Honor, the states in this case
10 believe that this TRO can be answered with two simple
11 questions: Is this a programmatic grant of parole, and if so
12 is it permitted by the Immigration and Naturalization Act?
13 That is the same question that's being asked in the underlying
14 dispute that's currently live in the amended complaint. That's
15 what we're asking the Court to take up in the supplemental
16 complaint, and that's what we're asking the Court to decide as
17 it looks at the TRO.

18 The program in this case grants parole to persons who
19 appear at the border based not on individual characteristics,
20 but because of characteristics of agencies that apprehend them.
21 They do not look to the individuals to determine whether or not
22 the individual has an urgent humanitarian need to be admitted
23 into the United States. They do not look to the individual to
24 see whether or not the individual being released into the
25 United States would be of significant public benefit. Instead,



1 they are looking to themselves to determine whether it is a
2 significant public benefit for the agency to do the releasing.
3 That is not the way that the Immigration and Naturalization Act
4 is supposed to work.

5 When Congress passed the IIRIRA, they specifically
6 limited the parole authority to urgent humanitarian need and to
7 significant public benefit so that the executive could no
8 longer dodge the requires of immigration law through aggressive
9 use of the parole power. The Fifth Circuit has told us that
10 the paradigmatic cases for the use of the parole power are
11 someone who urgently needs medication attention that can be
12 obtained only in the United States and a person who qualifies
13 for a visa, but there simply are not a numerically sufficient
14 number of visas and they have to wait for their place in line
15 to come up. That is not what CBP is doing here.

16 What CBP is doing here is announcing they are simply
17 overwhelmed and thus they are going to stop obeying law. That
18 is not how the law works. That has never been how the law
19 works. It is not up to CBP to determine what the law is or
20 whether to comply with it. It is up to CBP to comply with it,
21 and we are asking that the Court temporarily restrain its
22 operation of the Parole with Conditions program so that it
23 complies with the law, rather than flouts it.

24 THE COURT: All right. Mr. Reuveni, Mr. Darrow,
25 which one is taking the lead on this?



1 MR. REUVENI: It's me, Your Honor, and I'll note that
2 the sun is still up and I'll hope it remains up as we --

3 THE COURT: I guarantee you that the sun will be up
4 when we're done with this hearing.

5 MR. REUVENI: So, Your Honor, I appreciate Mr. Olson
6 jumped right into this TRO, and I appreciate your getting us on
7 calendar here on short notice to talk these issues through. I
8 think there's a lot of preliminary stuff that we need to get
9 through before we talk about this TRO, and I'd like to talk a
10 little about that if the Court will indulge me.

11 The -- for starters, we have a -- well, we have a
12 nationwide injunction right now. I mean, everyone, every party
13 in this case, every person in the country, every party in the
14 country who doesn't care for this policy is covered. Granted,
15 it was issued as a TRO, it lasts for 14 days. Yes, the
16 Government may or may not appeal that. You know, that's still
17 under consideration. But right now, as of the moment,
18 plaintiffs have filed this TRO at four o'clock on a Friday.
19 They are protected, they cannot argue irreparable harm. They
20 knew about this -- oh, I'm sorry. I'm echoing. Is -- are you
21 getting that echo? Is that me?

22 THE COURT: Yeah, that's normally because somebody
23 else has their volume on. It may be me, so I'll go ahead and
24 mute myself. Go ahead.

25 MR. REUVENI: All right. Test, test, looks like



1 that's working now. Oh no, I'm still echoing. I can continue,
2 Your Honor, if you don't mind the echo.

3 THE COURT: Yeah, yeah. It's very mild on my end.
4 Go ahead.

5 MR. REUVENI: Okay. So as of right now, Texas, all
6 the other plaintiffs, everyone who doesn't like this policy
7 cannot go to any court and say they're suffering irreparable
8 harm. There is no irreparable harm anyone can argue because
9 this policy, for all intents and purposes, is in -- doesn't
10 exist. It doesn't -- it's enjoined, it doesn't apply to
11 anyone.

12 So I'm a little bit -- frankly, I don't know why
13 we're here right now. I mean, plaintiffs reached out to us,
14 and we had this conversation. I -- I'm -- certainly have not
15 been under a rock for the past 24 hours. They've known about
16 this injunction. And even if they didn't, we told them about
17 it. We said, hey what's the rush here, let's talk.

18 They filed their motion. They didn't mention the
19 TRO -- I'm sorry, the TRO here, the decision. They -- that
20 seems an odd omission in a TRO motion, bringing everyone
21 together on a Friday at five o'clock. They're claiming there's
22 a extreme emergency that requires us to be here. So there's no
23 basis to issue a TRO right now. That's the first thing.

24 I think, second, we have this case in Florida. Is
25 the federal government happy with the result there? No, we



1 were enjoined. But Judge Wetherell there is very, very
2 familiar with these issues, not just this new policy, but the
3 prior policy and prior policies that have been implementing
4 sort of decongestion approaches to CBP border facilities. And
5 he wrote a 107-page decision after a trial on the merits. If
6 there's any situation that calls out for comity between the
7 courts and the court in the later-filed case maybe slowing down
8 or deferring to the earlier-filed case, exactly as Your Honor
9 did in the Title 42 companion cases that we discussed at one of
10 our hearings earlier in this case, it's this case. I mean,
11 these claims aren't even in this case yet, which is very
12 different from the Title 42 situation where they filed a
13 lawsuit that actually raised the relevant claims.

14 We're going to trial in a month on the actual claims
15 in this case. It seems to me that if -- and there are very
16 good reasons to deny outright the amendment and just direct
17 Texas to file a new lawsuit or go join the one in Florida. I
18 would direct the Court to Fifth Circuit precedent on this.
19 They've moved to supplement. Leave to supplement should not be
20 granted where the, quote, "transaction, occurrence, or event,"
21 end quote, is unrelated to the original cause of action. There
22 is -- that's 158 F.3d 343 (5th Cir. 1998) and the rule, Federal
23 Rule of Civil Procedure 15(d). There's a good number of cases
24 saying the same thing.

25 There's no arguable connection between this new



1 policy and the policy at issue in this case. They do very
2 different things. They apply to very different groups.
3 They're implemented by different agencies. So right there, we
4 should just maybe focus on that, slow things down, brief that
5 issue if we need to, although we think, respectfully, you can
6 just deny the motion right here right now, save us all the rest
7 of the afternoon. And plaintiffs -- they can file their
8 lawsuit. If they feel strongly that they also need to get a
9 TRO of a policy that's already been enjoined, they can file a
10 new lawsuit or they can go join their -- go join the case down
11 in Florida. We'll be in Pensacola next week on a preliminary
12 injunction hearing in that case after the 14-day -- and the
13 14-day TRO likely is extended while that preliminary injunction
14 is decided. So I welcome them to join us there.

15 I'd also add there's a bit of an anomaly here.
16 Florida is a party in this case, and Florida is a party in the
17 other case. Florida got a TRO in the other case, so there's
18 also sort of a serious first-to-file issue now. I mean, is
19 Florida going to drop out of this case? I -- it's just very --
20 the procedure here is very odd.

21 And then a couple more just table-setting points
22 before we talk about the actual underlying merits here, if we
23 have to at all: Let's say you amend the -- now, let's say you
24 grant to leave to amend, notwithstanding that there is no
25 connection between this policy and the policy already at issue



1 in this case. I know I'm a bit of broken record player on
2 this, Your Honor, and I have to try at least once here, but
3 plaintiffs say in their complaint this won't affect the
4 schedule. That's just -- that's not serious. That's not
5 credible.

6 We're going to go to trial on the 15th on all these
7 claims? We're going to have to do new discovery. We're going
8 to have to do new briefing. We're going to have new pretrial
9 filings. Like, do we really want to derail the schedule we
10 have in this case on this specific and unique policy to have
11 this second case essentially glommed on here, glued at the
12 elbow or wherever and join this case? That -- it just doesn't
13 really make any sense at all, and it would really derail this
14 case.

15 We're already facing a situation in this case where
16 -- and, of course, Mr. Olson can speak to this, too, but we've
17 had numerous conferrals with Texas, with the plaintiffs, with
18 the intervenors, where Texas has asked us a number of times --
19 and the intervenors, although I'll let them speak to it, as
20 well -- they -- tell us who your witnesses are so we decided if
21 we need to call witnesses. Our witness list isn't due till the
22 2nd. It seems to me highly likely, even without the
23 amendments, that they're -- Texas is seeking to make to their
24 complaint at this late -- to this case -- and it's going to
25 come around June 2nd. There's going to be motions to compel.



1 There's going to be disputes over whether we need to --
2 depositions of witnesses.

3 A very good reason to deny a motion to supplement or
4 amend in this is exactly that: It will completely upend the
5 case and the schedule we have in place. And so really where
6 there's no colorable argument for irreparable harm whatsoever
7 right now, really where there's a very clear precedent on
8 Texas, then plaintiffs should not be able to supplement the
9 complaint in the way that they're trying to here and then,
10 based on that supplementation, seek the TRO. I really think
11 you should deny the TRO (audio interference) prejudice. They
12 can refile it should they feel the need to.

13 We should brief these issues about the motion to
14 supplement, whether it's appropriate to grant it. And should
15 you agree that it is appropriate to grant it, at that time, and
16 only at that time, is it really appropriate to talk about a
17 motion for a TRO or a motion for preliminary injunction on
18 claims because now they're part of the case. They're not part
19 of the case now in that -- we haven't had a chance to brief
20 this, but I have seen this before. We have controlling Supreme
21 Court precedent you can't actually enter a TRO in a situation
22 like this unless and until the amendment has been granted. For
23 that I would point the Court to 325 U.S. 219, De Beers
24 Consolidated Mines versus, again, the United States.

25 That's my sort of table-setting. I'd like to pause



1 there. I don't know if I've moved the Court at all there or if
2 there's any questions about that before we actually talk about
3 the TRO. I think there's a lot of off-ramps before we get to
4 the TRO that we need to get through before we talk about the
5 TRO, and so I'll stop there.

6 THE COURT: Is -- I noticed in the footnote of the
7 temporary restraining order that there was an invitation, or I
8 guess a suggestion, to convert I to a preliminary injunction so
9 that you could go ahead and take it up on -- first off, are --
10 is it -- do you consider the TRO itself to be appealable?

11 MR. REUVENI: Well --

12 THE COURT: And I -- and either Mr. Darrow or you can
13 answer. I understand -- I think I saw his name on some of the
14 pleadings in the Florida case, so --

15 MR. REUVENI: Yeah. Thank you, Your Honor. No, I --
16 some of these questions I can't answer because these are
17 discussions that reveal sort of like the internal deliberations
18 of the solicitor general's office.

19 THE COURT: Okay.

20 MR. REUVENI: I mean, is it beyond -- is it possible?
21 Yes, it's possible. Like, we -- could we appeal this? Like,
22 this -- we're enjoined nationwide in doing something that we
23 have told courts under penalty of perjury that we believe we
24 need to be able to do right now. So, like, we stand by that.
25 But in terms of whether we think that's appealable, I can't



1 tell you that right now. I have to wait for my marching orders
2 from the solicitor general's office.

3 THE COURT: Right. Mr. Olson, can I ask you a couple
4 of questions?

5 And Mr. Reuveni, I'll double back. Remember, I'm
6 famous for letting people talk, so --

7 And then, Mr. Langarica -- I'm sorry --
8 Ms. Langarica, did I say your last name correct? Okay, great.
9 And so -- I'll tell you what, before I ask Mr. Olson questions,
10 could I get you to weigh in on that subject before we get to
11 the merits of the TRO, if you -- I don't know if you have
12 something.

13 MS. LANGARICA: Absolutely, Your Honor. I thank you.
14 And so I -- Mr. Reuveni explained that we think it's incredibly
15 relevant that Florida, which is a plaintiff in this case as
16 well, obtained this nationwide injunction last night, blocking
17 the exact same policy that they're seeking to now challenge
18 through this case. We also, you know, do not understand why
19 we're here at 4 p.m. on a Friday where there is just no urgency
20 to this motion because that injunction is in place.

21 As a very initial matter, you know, we urge the Court
22 to set a briefing schedule and even, you know, expediate it as
23 the Court sees is needed. But as intervenors, we need to have
24 an opportunity to brief and to argue why the supplementation,
25 even as a threshold issue, is not appropriate in this case.



1 And just to sort of preview, again, these issues that we would
2 be very willing to brief at greater length, we think this is
3 really complicated as to the question of whether, you know --
4 or as to the issue of Florida being a plaintiff both in that
5 case and in this one. Not only is that not in the interest of
6 judicial economy, but we really do raise the risk of competing
7 judgments or orders if this case -- if Your Honor allows the
8 supplementation and then also goes forward on any of the claims
9 that they have raised.

10 There are also issues with supplementing -- again,
11 just coming back to why need to properly brief this issue,
12 there are additional matters here. There is the fact that the
13 standing issues may be different as to the claims in the
14 original complaint here and compared to the ones proposed in
15 the motion to supplement. The underlying facts are different,
16 Your Honor, and we could tell all the reasons why that's true
17 in a proper brief.

18 And as Mr. Reuveni has mentioned, this would shift
19 the entire case, including the timeline, discovery, briefing,
20 for -- again, for the reasons Mr. Reuveni has mentioned.

21 There is also a -- you know, an arbitrary capricious
22 thing that we saw that we think would require a different
23 administrative record. And, you know, ultimately if Texas
24 wants to raise its own -- or Texas and the other plaintiffs
25 that have joined want to raise their own injury as to this



1 policy in a separate case from the Florida case, you know, and
2 understanding the fact that they could obtain completing
3 judgments or orders, you know, then they could go to the wheel.
4 We're not in a position where this is the exclusive vehicle for
5 them to pursue that, even considering -- or notwithstanding the
6 Florida case.

7 We also -- you know, as a -- as to the threshold
8 issue, we would urge and invite Your Honor to deny the motion
9 to supplement the complaint and also to deny the motion for the
10 TRO. But I understand that we're not going to get --

11 THE COURT: Right. I'm glad to hear everybody is
12 fighting to keep that trial schedule that, a few weeks ago, we
13 were having a serious discussion about whether not it was going
14 to work.

15 But anyway, Mr. Olson, what connection does this May
16 10th memo have to the parole program that deals with the four
17 countries in this case?

18 MR. OLSON: The connection, Your Honor, is the
19 underlying legality. They both depend on the same subsection
20 of the INA. They both depend on Section 1252(d). And they
21 both depend on the interpretation of whether or not something
22 constitutes a significant public benefit or an urgent
23 humanitarian need. They are operated as two separate programs,
24 but deciding the scope of the meaning of those terms decides
25 both of the programs' legality.



1 Our concern with bringing this as a new lawsuit -- I
2 don't know, Your Honor, if you remember in the prioritization
3 case, DOJ argued there that we were claim splitting because we
4 had -- already had the previous Title 42 case pending in front
5 of Judge Kacsmayk, and both of those cases had raised the
6 issue of whether or not detention was mandatory under
7 particular parts of the INA. We wanted to avoid arguments over
8 claim splitting by having two separate cases over parole
9 programs, instead have them together in a single case. That's
10 why the supplementation is here as opposed to a filing a new
11 lawsuit on the completely separate program.

12 THE COURT: Well, what relief are you seeking in the
13 TRO that is different than the relief that Judge Wetherell
14 ordered last night?

15 MR. OLSON: The relief is identical; the bases for
16 the relief are not.

17 THE COURT: Well, I understand. So -- but isn't one
18 of the requirements for a TRO irreparable harm? And if the
19 program can't be implemented at least for 14 days, does that
20 mean at least immediately -- in other words, there's plenty of
21 time for us to proceed a little bit more thoughtfully than you
22 typically do in a TRO stance.

23 MR. OLSON: I agree with that, Your Honor.

24 THE COURT: Okay.

25 MR. OLSON: At least as long as Judge Wetherell's TRO



1 is in place, there is -- there's no need for the Court to rush
2 out a ruling. Our concern is if that does get stayed, either
3 by Judge Wetherell himself, by the Eleventh Circuit, by the
4 Supreme Court, then the defendants simply restart the program.
5 We don't want the defendants to restart the program. We would
6 like the program to be set aside, or at the very least, stayed
7 until the merits of the case are decided.

8 That's why this -- and I do want to very quickly
9 address what Mr. Reuveni said, that it was strange that we did
10 not address the Florida TRO in our own filings. I agree that
11 was very strange. I thought that we had done that right up
12 until I reviewed everything after we had filed it. Because we
13 were in such a rush, it got taken out as part of the editing
14 process and never got pasted back in from the editing document
15 into the filing document. And I --

16 THE COURT: Well, we -- you can rest easy. I read
17 the Florida case notwithstanding and -- including the March
18 decision, the briefing, and the response by the DOJ, as well as
19 the TRO. So you agree then that the immediacy of the
20 irreparable harm is not at issue now because that is in place
21 at least for the next 13 days?

22 MR. OLSON: Yes, Your Honor.

23 THE COURT: All right. Since Florida is a
24 coplaintiff in this case, is there any particular reason why
25 you didn't join the case in Florida? It's obviously -- it's



1 obvious that the two of you talk.

2 MR. OLSON: We do talk, Your Honor. And to my
3 knowledge, no one reached out to our office to see if we would
4 like to join that case. We reached out to our coplaintiffs
5 last night to see if they would -- we realized that this was a
6 different program than the program we had been challenging. So
7 despite Texas's concerns about claim splitting, other states
8 might not have that concern. They might want to pursue their
9 own claims. We reached out to our coplaintiffs to see if they
10 wanted to join us in the supplementation. Florida notified us,
11 no, thank you, we have our own thing going on. If there was --
12 it was --

13 THE COURT: So is there going to be a separate
14 administrative record for this? Or is this going to be the
15 same administrative record for the current parole program that
16 we've got going?

17 MR. OLSON: I suspect it would be a separate
18 administrative record. They will probably likely contain many
19 of the same documents. But I would anticipate --

20 THE COURT: Well, we're --

21 MR. OLSON: -- separate.

22 THE COURT: We're a month out from trial. I don't
23 see how we can keep a -- the current trial setting with a new
24 administrative record that has to be produced and, I guess,
25 incorporated into the new trial. You would agree that the June



1 trial setting is at risk, at best?

2 MR. OLSON: Without knowing from the defendants how
3 long they think it would take to produce the administrative
4 record, I would agree that there is the potential for it to be
5 (audio interference).

6 THE COURT: So one thing I guess I hadn't thought of
7 is that you said Florida has not joined in the motion to
8 supplement, so they would be a plaintiff as to some claims, but
9 not this particular claim?

10 MR. OLSON: They would be a plaintiff as to the four-
11 nation parole program, but not this program.

12 THE COURT: All right. Since we have established, I
13 think, that the immediacy element is not an issue at this
14 particular time, I would like to ask the parties how they would
15 like to proceed so that we could get some briefing on, I guess,
16 first the -- and I'm open to consolidating it for the motion
17 for leave to supplement or -- and the motion for TRO, or have
18 them filed separately. It seems to me that the first thing we
19 need to find out is whether or not it makes sense to allow the
20 supplementation.

21 So I will say this: For the Title 42 case that was
22 filed in Judge Summerhays's court in Louisiana and then was
23 filed in my court, one of the important things that I thought
24 of was that's within the same circuit. So if you have
25 competing pieces of litigation that are going to the same Fifth



1 Circuit, it didn't make sense to me to proceed. I understand
2 that this is two different circuits, and so that's a little
3 less of a concern. If the preliminary injunction is -- if the
4 TRO is turned into a preliminary injunction, I would be
5 interested to know what the parties think about, again, what's
6 the point if that is in place pending a trial setting.

7 And so I guess those are just kind of my
8 stream-of-consciousness thoughts. How would the parties --
9 Mr. Reuveni, I see you're anxious to jump in. Go ahead.

10 MR. REUVENI: Yes, thank you, Your Honor. I am a --
11 I am somewhat anxious to jump in here. I really think we need
12 to brief the supplementation issues, and we need to put a pin
13 in the TRO and/or treat it as a PI or whatever. Like, we need
14 to know why these claims should even be here and, in fact, that
15 they are. And let me just -- back to that for a minute.

16 Let's assume worst-case scenario for Mr. Olson and
17 his -- the other plaintiffs. Somehow Judge Wetherell stays his
18 decision, or the government decides to appeal and the Eleventh
19 Circuit stays their decision, they have their TRO on file. At
20 that time, I think you make -- you could order the parties to
21 respond quickly because, you know, we asked for it, we asked
22 you not to decide this right now, and we would do so. I mean,
23 you already have our briefing. We could put together new
24 briefing. I mean, I think we'd love to have the admin record
25 before we do any briefing, frankly. But let me talk about that



1 in a minute.

2 THE COURT: Wouldn't that --

3 MR. REUVENI: But from the government's perspective

4 -- oh, sorry.

5 THE COURT: Wouldn't that only happen if I granted
6 leave to supplement though?

7 MR. REUVENI: Right, which is why I think you should
8 just put a pin in the TRO and litigate the motion to
9 supplement. I mean, if you -- like, that comes before. I
10 think Texas is putting the cart before the horse here.

11 We have really, really compelling arguments why there
12 should not be supplementation. And let me say two things about
13 this. First, I heard Mr. Olson say it's related because it
14 involves parole, but especially saying it's related because it
15 involves immigration law. Like, that's literally not how the
16 test -- transactional tests work.

17 The test is, is it the same transaction, occurrence,
18 or event? Is this the same parole memo? No. Does it use the
19 same statute? Yes. So does hundreds of other things the
20 government does. That doesn't mean that in a single case that
21 Texas brings, then that becomes the court in which every single
22 one of those policies that arise under the immigration laws are
23 now decided. That's not -- that's definitely not how that
24 works. It's -- the Court should reject that. I -- it -- this
25 is not the same policy and that's really -- that's the test.



1 I'm happy to brief this and give you some more cases
2 on this that support us. We did some quick research before the
3 hearing and the Fifth Circuit law is pretty clear on this. So
4 I don't see how we even begin to talk about whether we're
5 briefing a TRO, whether we're producing a record, whether we're
6 doing discovery, whether we're delaying the trial until we
7 brief that. So we think we should brief the motion to
8 supplement.

9 If Texas truly thinks that its interest are being
10 harmed in the event that, say, the TRO in Judge Wetherell's
11 court is somehow stayed or the PI -- it's not converted into a
12 PI, or a higher court does something, Texas is not without
13 relief. They can file sue in any court in the Fifth Circuit if
14 their concern is the Fifth Circuit. They have -- as they've
15 told you in this case, they can file in any of the 28 divisions
16 that they're -- and as you found, they're a resident in every
17 single one of those divisions.

18 So it's a little unclear to me. I haven't really
19 heard an explanation beyond this involves the parole statute
20 why we're here. If they truly think their interests are at
21 stake, file a new lawsuit. Maybe it gets assigned to you,
22 maybe it gets to -- assigned to somebody else, but they have
23 their TRO. It's written, they can file it. That judge, free
24 of these overarching distractions of whether there's
25 supplementation, whether there's a trial happening in a month,



1 whether we have all these deadline that are now going to get
2 backed up and delayed should supplementation be granted, can
3 deal with it neat and clean. And they'll file a TRO --

4 THE COURT: So let me ask you this --

5 MR. REUVENI: -- and we'll oppose it (indiscernible).

6 THE COURT: Let me you this, cause it -- this was
7 more about the scheduling of it -- the motion's on file, how
8 much time would you like to be able to file a response to the
9 motion -- if it's -- if we're putting a pin in the TRO?

10 MR. REUVENI: But I want to be reasonable, and I
11 don't want to be greedy. I mean, what do we -- I think we're
12 entitled to two weeks under your rules. I think I would ask
13 for the two weeks. If the Court wants -- that means we should
14 expedite that for whatever reason, I -- we can give you a brief
15 in a little less time. I just -- speaking for the government
16 at least -- and I know some of my colleagues are on the phone
17 right now, it's a busy time.

18 THE COURT: Yeah.

19 MR. REUVENI: It's a busy, busy time. And I know
20 that's true for Texas. I know that's true for the other
21 plaintiffs. I know that's true for the intervenors. Some
22 things in the news occurred recently, so we're all very busy.
23 So we would certainly appreciate as much time as we can get.
24 And if we can get two weeks, that's what I would ask for. I
25 understand if the Court wants to move it more quickly.



1 The thing that's important for us, the federal
2 defendants, is put a pin in the TRO. Let's brief the
3 supplementation issues. And again, if the need ripens, there's
4 -- the other order somehow is disturbed, is stayed, whatever,
5 we can be right back in front of you next Friday and do it all
6 over again.

7 THE COURT: Let me ask you this -- and I've -- I just
8 kind of thought of this so this is stream of consciousness and
9 I don't know what we think. But what about kind of bifurcating
10 this issue, kind of put -- setting it to the side so that we
11 can keep our current trial schedule, find out what happens in
12 Florida; and then, when that's resolved, bring that back up
13 separately?

14 MR. REUVENI: I -- if I'm understanding what you're
15 saying it is -- you're saying let's plead this motion --

16 THE COURT: Just --

17 MR. REUVENI: -- (audio interference) for now. I
18 think that works, just talking about essentially what is a
19 stay, officially or unofficially, of these motions, and then
20 they can -- should they ripen in the future, we can revisit. I
21 think that works.

22 THE COURT: Right. And so the reason why is because
23 on the Title 42 case -- so on the border wall case, I just
24 transferred that sua sponte, but that was within the division.
25 The Title 42 case, I stayed it pending resolution because the



1 TRO was in place at that time and the preliminary injunction
2 hearing was set, but there was nothing else going on.

3 The difference in this case is we've got a trial on
4 different claims, so I would be splitting this so that we'd
5 keep our current trial schedule and just kind of carrying this.
6 And if, out of Florida, we still get nationwide relief that is
7 what Texas is already asking for, then there's really nothing
8 to litigate, I would think. But those are just kind of (audio
9 interference) if that part is stayed, but we'd continue with
10 the trial as is. That's, like I said, just kind of thinking
11 out loud.

12 MR. REUVENI: May I, Your Honor? I --

13 THE COURT: Sure.

14 MR. REUVENI: -- think from a practical standpoint,
15 that makes a lot of sense. I'm not sure that I've fully
16 thought through what that might mean though in terms of if that
17 -- those claims are hanging on. Let's say we go to trial. You
18 roll one way or the other, somebody's going to want to appeal.
19 We're going to want a final judgment, but if those claims are
20 still hanging around --

21 THE COURT: Well, can't I (audio interference) at
22 that point?

23 MR. REUVENI: You could stay them. You could dismiss
24 them without prejudice. They could refile it should they need
25 to since you've dismissed without prejudice, I guess.



1 THE COURT: Could I sever them and open up a new
2 matter?

3 MR. REUVENI: If you believe that they are entitled
4 to supplement, then grant that motion.

5 THE COURT: So I'm not -- I'm trying to not get the
6 cart before horse. If the TRO that's in effect now ultimately
7 becomes a preliminary or permanent injunction, what I don't
8 want is for everybody -- because Texas would get the relief
9 they're seeking, right? To me, I was making sure everybody
10 agreed what has happened in Florida is the same relief that
11 Texas is looking for here. I don't want everybody -- I don't
12 want anybody to have to double up their work here if that's
13 going to be fully litigated in Florida. So I'm just trying to
14 figure out ways to be efficient.

15 MR. REUVENI: It will be litigated one way or the
16 other. When we -- we can notify this Court when the government
17 makes a decision one way or the other if it's appealing. And,
18 of course, if something were to happen to the injunction, we'll
19 let -- we can let the Court know. I still think, though, at
20 that point, let's say that happens -- let's say this case, with
21 Texas's position, the Eleventh Circuit stays the injunction if
22 we seek a stay and if we appeal. So all the -- I have to speak
23 in hypotheticals for (audio interference).

24 THE COURT: Right.

25 MR. REUVENI: And then, so there's a stay, and then



1 we're right back here where we started, and then they're going
2 to say, oh, we have the TRO, we need a decision, but there's
3 still the supplementation issue that's hanging here. Like,
4 they cannot get the TRO in this case until you grant leave to
5 supplement.

6 THE COURT: Right.

7 MR. REUVENI: And for reasons that, you know, we've
8 discussed, they have a really hard argument to make there. So
9 again, I just wondered if maybe you'd dismiss -- the simplest
10 thing is dismiss without prejudice, they file a new lawsuit
11 wherever they choose, wherever -- and they're ready to go to
12 get their TRO, should they need to.

13 THE COURT: Well, I don't --

14 MR. REUVENI: And we'd obviously tell that new judge
15 -- oh, I'm sorry.

16 THE COURT: I don't know that I would dismiss. I
17 would just deny the leave to supplement the complaint.

18 MR. REUVENI: Right.

19 THE COURT: So --

20 MR. REUVENI: I'm sorry, I misspoke. That's what I
21 meant, right. And, of course, to be clear, I mean, if they
22 file a new lawsuit, should you do that, if you deny leave to
23 supplement, we're going to tell that other judge, whoever that
24 may be, you shouldn't issue a TRO for the same reasons I just
25 told you, but at least they'll have their vehicle to seek their



1 relief should they feel they need to seek relief, depending on
2 what happens in the Eleventh Circuit case.

3 THE COURT: All right. Mr. Olson, we've been talking
4 about you in front of your back, so do you have any -- want to
5 weigh in on any of those thoughts?

6 MR. OLSON: I will start with the most recent thing
7 that was being discussed. I think bifurcating the issue would
8 be a practical solution, Your Honor, if you do allow us to
9 supplement the claims. I know there are -- and I'm being a bad
10 appellate lawyer now. I don't believe -- it's not partial
11 final judgment, but I know that there are methods within the
12 federal rules that allow a judgment to be entered and appeal
13 taken as to some claims while other claims remain pending in
14 the trial court. So --

15 THE COURT: Well, the reason why -- what I'm trying
16 to do -- Mr. Reuveni, are you litigating the Florida case?

17 MR. REUVENI: Yes, myself, Mr. Darrow, some others.

18 THE COURT: All right. So I guess I hadn't seen your
19 name on that.

20 So what I'm trying to do is he's -- Mr. Reuveni's
21 getting ready for a trial in this case in June. I don't want
22 to jam him up over the course of the next week or two filing a
23 response to this if the relief that you've requested is in
24 place. And so what I'm trying to do is figure out a way to
25 keep him from having to respond to these while that relief is



1 in place while keeping our current trial schedule.

2 MR. OLSON: I understand, Your Honor, and as a bad
3 appellate lawyer now and a good trial lawyer, I would urge you,
4 as a tactical matter, to please don't worry about jamming
5 Mr. Reuveni up. I'm sure he's more than capable of handling as
6 many things as we need to throw at him. But more
7 realistically, Your Honor, I agree that the urgency is not
8 present as long as the TRO is in place in Florida. And that
9 would extend through if there is a temporary injunction that
10 remains in place in the case in Florida. So when it comes to
11 that, I agree that either bifurcating or leaving some claims in
12 an abeyance posture would be a more efficient way to resolve --

13 THE COURT: All right. How about this? Mr. Reuveni
14 asked for two weeks. So the two weeks, like I said -- you
15 know, I think Mr. Reuveni is probably an accurate Nostradamus
16 on the fact that the TRO is very likely to be extended while
17 the judge works on the results of the preliminary injunction
18 hearing, so -- and if I get -- do you have any problem with two
19 weeks for him to respond to your motion for leave to
20 supplement?

21 MR. OLSON: No, Your Honor.

22 THE COURT: Okay. Well, then if we do that -- now,
23 Mr. Reuveni, does that free you up sufficiently? That's what
24 you asked for, so --

25 MR. REUVENI: Yes, Your Honor. We asked for it, we



1 can give you a response in two weeks on that.

2 THE COURT: Well, don't ask for it and then whine
3 about it. Come on now, so --

4 MR. REUVENI: I didn't realize I was whining, Your
5 Honor. I --

6 THE COURT: No, I'm kidding, I'm kidding.

7 MR. REUVENI: -- I think you'll know when I'm
8 whining.

9 THE COURT: No.

10 MR. REUVENI: It's (indiscernible).

11 THE COURT: No, I'm kidding. I am sensitive. I
12 remember it wasn't that long ago to where I had multiple
13 settings, and I'm sensitive to the fact that you're getting
14 ready -- there's a lot of moving parts in this.

15 So why don't we do this? Why don't -- now, I don't
16 want to leave out the intervenors. Ms. Langarica, what do you
17 think about having that briefing schedule?

18 MS. LANGARICA: Your Honor, as to the motion to
19 supplement the complaint, I think -- we agree that, at minimum,
20 we need to be able to brief this fully. We would, you know, be
21 okay with a default briefing schedule. As to that motion, we --
22 -- you know, if the Court wanted to stay the motion and deal
23 with it at a later time for all the reasons that Your Honor
24 discussed, you know, we would be okay with that, too.

25 As to the TRO motion that is before the Court today,



1 the plaintiff states who filed it have conceded that there's no
2 irreparable harm here and there's no urgency, and so, you know,
3 Your Honor is in a position to -- and we think that the Court
4 should deny that TRO motion today. Again, you know, the
5 federal rules do not allow for anticipatory TROs. And so
6 there's no irreparable harm. You know, if and when that
7 irreparable harm does arise, then the states could refile that
8 motion. But we just want to be very clear that the TRO could
9 be -- should -- must be denied today because that element is
10 not met.

11 And as to the supplementing the -- the motion to
12 supplement the complaint, I think, again, we're okay with the
13 default briefing schedule and also would be okay with staying
14 this until a later date.

15 THE COURT: All right. Well, I would encourage the
16 parties, I guess, to try to figure out a way -- to the extent
17 that it makes sense to even have the claim, what -- first off,
18 I'm not encouraging the DOJ or the intervenors to agree to
19 allow the supplementation, but maybe to have an alternative
20 that says, if this happens, in order to keep our trial setting,
21 you know, we could bifurcate -- bifurcate, stay, sever, I don't
22 even know if those are options. What I was trying to do,
23 Mr. Reuveni, quite frankly, with that suggestion was to keep
24 you from having to respond to the motion for leave to
25 supplement so that we could carry that so that you were getting



1 ready for trial. So --

2 MR. REUVENI: Well, I appreciate that, Your Honor.
3 I'm -- all I'm saying on behalf of the United States here is we
4 are fine with responding to the motion to supplement in two
5 weeks, so long as the TRO has a pin in it. And I agree with
6 the intervenors, there's no basis to grant it, and there's
7 really no basis to hold it in abeyance. There's no irreparable
8 harm, so you should really deny it without prejudice. They can
9 refile it should the need arise.

10 Look, would we want to file a brief in two weeks
11 versus two months from now? Obviously, we're always going to
12 want more time, but I did tell you we'd be happy to give you a
13 brief in two weeks. But I do agree, it does make some sense,
14 if you deny the TRO, to delay briefing on the motion for
15 supplementation.

16 THE COURT: Well, I can tell you this. I certainly
17 would not grant the TRO until I had signed an order allowing
18 the supplementation. To me, the TRO is not even ripe until the
19 complaint allows for the further relief requested. The relief
20 requested in the active complaint deals with the four
21 countries, the parole program. So, to me, the TRO's not even
22 ripe at this point.

23 So why don't we do that? Today is the 12th. Why
24 don't we have the intervenors and the DOJ respond, the
25 defendants respond, on May -- is it 26th?



1 MR. REUVENI: Let's see here. That does look like
2 the 26th, Your Honor, another Friday before a holiday.

3 THE COURT: Is it? What's that one?

4 MR. REUVENI: That's Memorial Day.

5 THE COURT: It's in the rules, I told you. It's an
6 addendum, so -- so I would -- all right. So we will have the
7 responses to those. The TRO, as I've said, in my mind, is not
8 ripe to be ruled on until there is an active complaint that
9 supports it, and so I haven't allowed that at this point. So
10 that's where we are on that. In the meantime, I guess we will
11 find out if Judge Wetherell is either going to grant or deny an
12 extension on the TRO and/or the preliminary injunction, maybe
13 be in a little better position to decide how to proceed.

14 Does that sound reasonable to everyone?

15 MR. REUVENI: Yes, Your Honor, for the --

16 MR. OLSON: Yes, Your Honor.

17 MR. REUVENI: -- for the defendants, that is
18 reasonable.

19 MS. LANGARICA: Yes, Your Honor. That's okay with
20 us. Thank you.

21 THE COURT: All right. So just on the case in
22 general, an unexpected status check, how are things proceeding?
23 Discovery, witnesses, all of that. Are things proceeding so
24 far, or is there anything that we need to anticipate having to
25 address?



1 MR. REUVENI: For the --

2 MR. OLSON: Speaking for -- oh, I'm sorry, go ahead.

3 MR. REUVENI: No, no, go ahead. Go ahead, Mr. Olson.

4 MR. OLSON: No, I was going to say, Your Honor, from
5 the states' point of view, we've had a lot of really productive
6 discussions with the defendants and with the intervenors about
7 discovery that all parties are seeking and about coming to
8 agreements on how quickly to do it and the scope of what's
9 going to need to be produced. And even when we haven't come to
10 an agreement, we have been working and playing nicely with each
11 other. And so I can tell you that we are not poisoning any
12 relationships ahead of the trial date, so we anticipate that
13 we're going to be able to put this on for you professionally
14 and timely and hopefully with Mr. Reuveni as jammed up as
15 possible.

16 THE COURT: All right. That turned into a little bit
17 of a commercial, okay.

18 MR. REUVENI: Mr. Olson, my wife and son would like a
19 word, but we can handle that offline.

20 THE COURT: So I'll say, Mr. Reuveni, when I made the
21 comment about whining, you knew, of course, that I was joking.
22 I forgot that there's a lot of other people watching that. I
23 don't consider anything that you have done to be that. I, when
24 I was an attorney, did that quite frequently, so -- but anyway,
25 your thoughts on how the discovery is proceeding and whether or



1 not court intervention is anticipated?

2 MR. REUVENI: I mean, I'd like -- I believe we should
3 be on track, but I honestly don't -- I can't say with certainty
4 if Texas plaintiffs will be happy with our production. But,
5 you know, our clients are doing what they are -- they need to
6 do and are expected to do to meet the deadlines and do it with
7 -- in good faith and due diligence. And we have worked out a
8 protective order to avoid having to fight about privileged
9 information or protected information that the parties -- or at
10 least defendants will be getting on file soon. We reached out
11 -- Texas has agreed. we've reached out to the intervenors
12 about that. I don't anticipate any issues there. And we'll
13 produce our discovery on the 19th and get our brief on file on
14 the 2nd.

15 THE COURT: All right. So far, so good then is what
16 I'm hearing.

17 Ms. Langerica.

18 MS. LANGARICA: Yes, Your Honor. Thank you. One
19 outstanding question that we have for intervenors is whether
20 the states intend to depose or otherwise live examine any of
21 our experts. I know we had some discussion about sort of, you
22 know, who our experts will be because we are not due to file
23 those things until the 2nd. We remain unclear on that.

24 THE COURT: All right. Well, I'll leave you to, I
25 guess, negotiate that with the plaintiffs' attorney if --



1 Mr. Olson. If that becomes an issue, don't hesitate to reach
2 out so that we can settle it quickly. Obviously, like I said,
3 I don't want any of the -- any discovery disputes to hold the
4 case development up, so --

5 So is there anything else, I guess, from the states
6 that we need to bring up or address at this point?

7 MR. OLSON: Not -- no, nothing else from the states,
8 Your Honor. From me personally, I realized I misspoke when I
9 was discussing the previous prioritization trial. It -- the
10 government's position there was that it was the MPP case
11 pending in front of Judge Kacsmatyk --

12 THE COURT: Right.

13 MR. OLSON: -- not the Title 42 case that had been
14 pending in front of Judge Pittman.

15 THE COURT: No, I was aware, but that's okay. I
16 appreciate that clarification.

17 Anything from the federal defendants?

18 MR. REUVENI: Nothing further, Your Honor, and you
19 were right, still sunny out there.

20 THE COURT: I'm a man of my word.

21 And from the intervenors?

22 MS. LANGARICA: Nothing further, Your Honor. Thank
23 you.

24 THE COURT: All right. Thank you very much. Like I
25 said, don't hesitate to reach out. We can set these up as



1 quickly as necessary to address any issues.

2 MR. REUVENI: All right, Your Honor.

3 THE COURT: Have a good weekend.

4 MS. LANGARICA: Thank you.

5 (Proceedings concluded at 4:48 p.m.)

6 * * * * *

7

8

9

10

11

12

13

14 **C E R T I F I C A T I O N**

15

16 I, Alicia Jarrett, court-approved transcriber, hereby
17 certify that the foregoing is a correct transcript from the
18 official electronic sound recording of the proceedings in the
19 above-entitled matter.

20

21

22

23

24 ALICIA JARRETT, AAERT NO. 428 DATE: May 22, 2023

25 ACCESS TRANSCRIPTS, LLC

